for a re-trial, and as the accused has already served six weeks imprisonment there will be no order for a re-trial.

With regard to the refusal of the Magistrate to admit the evidence of good character, which was proposed to be called, the passage from section 14 of the Summary Jurisdiction Act 1848 would show that it was the established rule to permit such evidence to be given. Evidence of general reputation having reference to the nature of the charge is admissible. See Cap. 13 sec. 53. It lays the foundation for the presumption of innocence and the reason for its admission is the desire to administer the law with mercy as far as possible. See *R.* v. *Rowten* (1865) 34 L.J.M.C. 57. Sometimes it may be important, as it may give credibility to the account given by the accused of the transaction out of which the charge against him arises. The reason for rejecting this evidence, viz. that "this case is a question of fact," is clearly unsound and the rejection was improper and it is difficult to say that with the absence of an address which might make it clear to the Magistrate that the defences of the two accused were not identical, this rejection has not occasioned a failure of justice.

On these two grounds the appeal is allowed and the conviction quashed.

*Appeal Allowed. Conviction Quashed.*

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[ORIGINAL CIVIL JURISDICTION]

HOWES, Ag. C.J.

May 24, 1937.

## CHEOK CHIN HUAT & ORS.

v.

## CHEOK CHIN SOO & ORS.

[SINGAPORE SUIT No. 4 of 1937]

[SUMMONS IN CHAMBERS No. 150 of 1937]

*Will of Chinese—construction—"and their families"—meaning of—adopted sons.*

A testator by her will devised to her trustees a house upon trust to permit the same to be used as a family house by certain named beneficiaries "and their families" for a period of twenty-one years from the date of her death. On the question whether the word "families" included the adopted children of beneficiaries named in the devise,

*Held,* that there was no context in the will which justified extending the primary meaning of "family" to children other than lawful children.

SUMMONS IN CHAMBERS adjourned into Open Court under an Order of De Buriatte, J.

The questions propounded for determination by the Court sufficiently appear from the judgment below.

*Withers Payne* for applicants (2nd and 3rd defendants), two of the trustees, contended that as the Testatrix died leaving lawful sons and their lawful children the devise of No. 23 Duxton Hill to the trustees upon trust that they should permit the same to be used as a family house by *inter alios* the 1st and 2nd plaintiffs and their families did not by its use of the words "their families" include the 3rd, 5th and 7th plaintiffs being adopted sons of the first and second plaintiffs respectively. He contended that "their families" must be construed to mean their lawful children or their respective wives and lawful children and that there was nothing in the will to displace the primary meaning of the word. He referred to *Pigg* v. *Clarke*, 3 Ch.D. 674; *re Terry's Will*, (1854) 19 Beav. 580; *re Muffett*, (1886) 55 L.T. 671; L.J. Ch. 600. He contended that the Court could not put itself in the position of the testatrix but must interpret the actual words of the Will having regard to the family of the testatrix at the time of the making thereof and referred to *Quaik Kee Hock* v. *Wee Gook Neo*, (1886) 4 Ky. 128, 130 and to *re Tan Cheng Siong deceased*, (1937) 6 M.L.J. 87.

*C. J. Koh* for the 1st defendant referred to *Dorin* v. *Dorin*, L.R. 7 H. L. 568; *Khoo Hooi Leong* v. *Khoo Hean Kwee*, (1926) A.C. 529 at 538.

*Mark Morrison* for respondents (3rd, 5th and 7th plaintiffs) adopted sons of 1st and 2nd plaintiffs, the lawful sons of the testatrix, contended that "family" in the Will of a Chinese includes adopted sons who amongst this race are treated as the members of the family. In the case of such a Will, the primary meaning of "family" is displaced.

*Cur. Ad. Vult.*

**HOWES, AG. C. J.**—This summons was, by order of de Buriatte J. adjourned into Court for the determination of the issue raised in prayer one, viz:—

> (1) Whether upon the true construction of the Will of Tan Yean Neo, deceased, dated 31st day of March 1927, the testatrix mentioned in the Statement of Claim herein, the above named third, *fourth*, fifth, *sixth* and seventh plaintiffs or any of them are beneficiaries under the said Will.

In the course of the hearing of this summons, Dr. Withers Payne (for the 2nd and 3rd defendants) asked the Court to delete the words "fourth" and "sixth" from the prayer, as he now admits that these two infant plaintiffs are beneficiaries under the will. This was accordingly done, but without preiudice to any question of costs, arising from the inclusion of these two plaintiffs in the summons.

As another preliminary; the second plaintiff, who besides suing on his own behalf, also sued as next friend to the third (infant) plaintiff, having been adjudicated bankrupt on the 17th March, 1937, it was agreed by Mr. Morrison (for the plaintiffs) at the suggestion of Dr. Withers Payne, that the first plaintiff should represent the third plaintiff for the purposes of this summons; and it was ordered that a representative order to this effect should be embodied in the formal order to be made in this summons.

The question before the Court is, whether the words " and their families" in clause 7 of the Will, by which the house known as No. 23 Duxton Hill, Singapore, was devised to the trustees of the Will, "upon trust that my trustees shall permit the same to be used as a family house by the said Ng Chye Lian, Lim Choon Eng, Cheok Chin Giap, Cheok Chin Seng, Cheok Chin Huat, Cheok Chin Ho and Cheok Chin Soon and their families for a period of twenty-one years from the date of my death."

The above-named seven beneficiaries are as follows:—

(1) *Ng Chye Lian* and (2) *Lim Choon Eng* are secondary wives of the Testatrix's husband.

(3) *Cheok Chin Giap*, a son of the Testatrix, has, I understand gone to China. He had no natural children but had two adopted sons. Neither he nor his adopted sons are parties to this suit; but it is stated in the affidavit of Cheok Chin Seng, the 2nd plaintiff, sworn on the 20th February 1937, that the Trustees in 1931, paid to Cheok Choon Teck, one of these adopted sons, the sum of $1,493.89 for his marriage expenses in China.

(4) *Cheok Chin Seng* and (5) *Cheok Chin Huat* are the sons of the Testatrix (and are respectively the second and first plaintiffs).

(6) *Cheok Chin Ho* (the second defendant herein) is a son of the Testatrix, and is now a trustee of the Will, having by a deed dated the 7th February 1934 been substituted for Cheok Cheng Kee, the husband of the Testatrix (the third defendant herein).

(7) *Cheok Chin Soon* (the first defendant herein) is the adopted son of the Testatrix's husband, and is one of the trustees appointed under the Will.

The 3rd plaintiff is an adopted infant son of Cheok Chin Seng (the second plaintiff). The 5th and 7th plaintiffs are the adopted infant sons of Cheok Chin Huat, the first plaintiff.

Both Cheok Chin Seng and Cheok Chin Huat are amongst the seven named beneficiaries under clause 7 of the Will, who, "and their families" are to be permitted to use the family house.

Does the expression "and their families" include their adopted children, so as to make the 3rd, 5th and 7th plaintiffs beneficiares under the Will?

The Will was drawn up in proper English form by a firm of Singapore solicitors, and must, accordingly, be construed according to English law.

As stated in *Halsbury* Vol. 28, para. 1226 "The first duty of a court of construction is, therefore, to ascertain the language of the will, to read the words used and ascertain the intention of the testator from them; it is not merely to ascertain what the testator's actual mental intentions were. Where the will must be in writing, the only question is, what is the meaning of the words used in that writing." And para. 1277:—"What is the meaning of such words in relation to the persons and things described, that is to say, who and what are the specified persons and things to be identified as the donees and the subjects of disposition or as the persons and things otherwise mentioned in the Will."

Clause 7 shows a clear intention on the part of the Testatrix that the house should be used "as a family house" by the persons enumerated "and their families," for a period of 21 years from the date of her death.

In the case of *Khoo Hooi Leong* v. *Khoo Hean Kwee*, (1926) A.C. 529 Lord Phillimore stated (at p.538):—"It is right in construing such a document as a settlement or a will that the Court should put itself into the position of the settlor or the testator and construe his language according to his knowledge. But this does not mean that the Court is to look anywhere for the intentions of a settlor except the terms of the document itself.....According to the principles laid down in these cases where there is a gift to a class there is a *prima facie* interpretation of words denoting descent or relationship which holds the field until it is displaced..... any evidence *dehors* the instrument itself to show that the settlor must have meant to use ordinary words of the English language otherwise than in their usual meaning, cannot be admitted."

The question therefore, is what is the usual meaning of the word "family"? This point was considered by Jessel, M.R. in the case of *Pigg* v. *Clerke*, (1876) 3 Ch. D. at p. 674. After stating that the word "family" has various meanings, of which he gave three instances, the learned Master of the Rolls, concluded:—"Now, every word which has more than one meaning has a primary meaning; and if it has a primary meaning, you want a context to find another. What, then, is the primary meaning of 'family'? It is 'children'; that is clear from the authorities which have been cited; and, independently of them, I should have come to the same conclusion."

The question for me to decide is whether there is sufficient in the present will to control the primary meaning of the word "families" in clause 7. Taking the primary meaning of the word "family" to mean "children," the latter word in a will means "legitimate children," as much as if the word "legitimate" had been introduced before it. [*Dorin* v. *Dorin* (1875) L.R. 7 H.L. 568].

In the present case, the first and second plaintiffs have legitimate children, in addition to adopted children, (the 3rd, 5th and 7th plaintiffs); so that there is no reason why this Court should seek to extend the primary meaning of "family" to children other than lawful children.

As was stated by McElwaine, C.J. in the recent case of *re Tan Cheng Siong (deceased)*; *Dunman* v. *Tan Seng Hwee and another*, 6 Malayan Law Journal 87, "When construing an English will in an English colony where adoption is no part of its law Common or Statute I think the word (child) should not be taken as including an adopted child unless the will indicates that such is intended."

It has been stated in the affidavit of Cheok Chin Seng (the second plaintiff) sworn the 20th February 1937, that the 3rd infant plaintiff is his adopted son and is part of his family; and since his adoption, was always recognized by the Testatrix as his son, and as part of his family, and was always treated by the Testatrix as such. Further, that the 3rd infant plaintiff has always been recognized by the 1st defendant as his (Cheok Chin Seng's) son; and that the 5th and 7th plaintiffs are similarly part of the family of the 1st plaintiff.

These statements are not denied by the second and third defendants, but cannot affect the construction of the will.

I can find nothing in the context of the will to entitle me to hold that it was the intention of the Testatrix to include adopted children under the word "families." On the contrary, where an adopted child is mentioned, he is either so described; e.g. in appointing Cheok Chin Soon as trustee, she described him as "the adopted son of my said husband" or, as in Clause 7, she specifically mentioned him by name.

In view of the numerous authorities cited as to the meaning of the word "family," and since adoption is no part of the law of the Colony, I have no alternative but to hold that on the strict construction of the will, the third, fifth and seventh plaintiffs are not beneficiaries under the will of the Testatrix.

It is ordered that for the purpose of this summons, the first plaintiff shall represent the third (infant) plaintiff.

*Order accordingly*

Solicitors for the Applicants.—*Drew & Napier.*

Solicitors for the 1st Defendant—*Aitken & Ong Sing.*

Solicitor for the Respondent—*Mark Morrison.*

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**END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.**

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# JOHORE REPORTS.

[APPELLATE CRIMINAL JURISDICTION]

LAVILLE, Ag. J.

June 2, 1937.

## S. SWAM PILLAY v. PUBLIC PROSECUTOR of JOHORE.

[JOHORE BAHRU CRIMINAL APPEAL No. 9 of 1937]

*Criminal law—assault—police investigation—statements taken—material evidence not called at trial—charge not maintainable—carrying arms in public places—Penal Code, s.352; Enactment 6 (Small Offences) s.36.*

In a privately conducted prosecution for assault under section 352 of the Penal Code a police investigation was held and statements taken from two persons who were present on the scene of the alleged offence, but their evidence was not called at the trial. The prosecution rested solely on the complainant's evidence and on the evidence of a witness not produced to the police,

*Held*, that the conviction could not stand in the absence of corroboration by the material witnesses whose evidence should have been but was not called. The witness who was called must be regarded with suspicion and his evidence disregarded.

The accused who held a license for a revolver was charged with going armed in a public thoroughfare an offence punishable under section 36 of the Small Offences Enactment. It was not denied that he carried a fully loaded revolver and went to a coffee shop where he was alleged to have pointed the weapon at the complainant. The accused was convicted and ordered to pay a fine of $5/-.

*Held*, on appeal to the Judge, upholding the conviction, that an offence is committed under section 36 of the Small Offences Enactment irrespective of whether the accused was found carrying the revolver on the five foot way which is a public thoroughfare or in a coffee shop which is a public resort.

*Semble*, the license to carry the weapon was no defence in that the weapon was unnecessarily loaded and possibly was being unnecessarily carried.

The appellate judge enhanced the sentence on this charge to a fine of $30/-, or in default 14 days' rigorous imprisonment.

MAGISTRATE'S CRIMINAL APPEAL.

*Walters* (*Mitter* with him), for the Appellant.

*Moore*, Public Prosecutor in person.

*Cur. Ad. Vult.*

**LAVILLE, J.**—This is an appeal against a conviction by Inche Esa bin Ahmad, 2nd Magistrate, Kluang, for assault under sec.352 and for going armed in a public thoroughfare under sec.36 Enact. 6 (Small Offences).

The evidence of complainant is that accused pointed a revolver at him in a coffee shop at Jalan Mengkibol, Kluang, on 18.11.36, whereupon he rushed out and complained to P.C.891 Abdul Manap. The latter came to the coffee shop and took accused away to the Police Station where accused handed over a revolver loaded.

The accused's defence is a denial of pointing the revolver at all, but he admits being in possession of it on that day and carrying it on his person. The revolver was properly licensed. Com-